C.S. 109/— (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CG)

WRIT PETITION NO. 215 OF 2004

BETWEEN

Dhaneshwar Soni S/o Maharang Orriya, aged about 41 years, occupation Chowkidar, M.P.Ayudyogik Kendra Vikas Nigam (now Chhattisgarh Audyogik Kendra Vikas Nigam, Raipur ,r/o Aamapara, P.S. Azad Chowk, Raipur, Tehsil and District Raipur (CG).

PETITIONER

P.R. No. 21635 dated
Presented by Shri Dhaneshwar Soni Petitioner

A N D

1. State of Chhattisgarh, through the Secretary Department of Industries, Mantralay, D.K.S.Building, Raipur (CG).

2. Chhattisgarh State Industrial Dev. Corporation Limited, through the Managing Director, Chhattisgarh State Industrial Development Corporation Limited,Raipur.

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

1. Particul

AFR

(49)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.2175 OF 2004

Dhaneshwar Soni

versus

State of Chhattisgarh and another

ORDER

Post for 4-12-2006

Sd/-
Satish K. Agnihotri
Judge

(50)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.2175 OF 2004

Petitioner : Dhaneshwar Soni

versus

Respondents : State of Chhattisgarh and another

Present : Mr. Awadh Tripathi, counsel for the petitioner.
Ms. Deepali Pandey, Panel Lawyer for respondent No.1.
Mr. Sameer Behar, counsel for respondent No.2.

ORDER

(Passed on 4th of December, 2006)

By this petition filed under Articles 226/227 of the Constitution of India, the petitioner seeks directions to respondent No.2 to revoke the order of suspension of the petitioner dated 28-10-1995 (Annexure P-3), to treat the petitioner as on duty on the post of Chowkidar and to grant the petitioner the arrears of difference amount of salary from the date of suspension with interest at the rate of 24% per annum.

2. The facts in brief are that the petitioner, who was employed as Sweeper in Industrial Centre Development Corporation (Raipur) Limited, Raipur, was given the charge of Chowkidar in the said Corporation at Raipur, by order dated 9-4-1987 (Annexure P-1). On 6-

10-1995, the petitioner was arrested in connection with Crime Nos.674/95, 675/95 for an offence punishable under Section 302 of the Indian Penal Code and, therefore, the petitioner was placed under suspension by order dated 28-10-1995 (Annexure P-3).

3. In the aforesaid crimes, two sessions trials, being Sessions Trial No.52/96 and Sessions Trial No.53/96, were held. By the judgment dated 6-6-1997 (Annexure P-4), the petitioner was acquitted in both the sessions trials. The petitioner, after his acquittal, made several representations for revoking his suspension and to allow him to assume his duties.

4. Learned counsel appearing for the petitioner submits that the suspension of the petitioner be revoked as the petitioner was placed under suspension on account of pendency of the criminal trial for alleged offence punishable under Section 302 of the Indian Penal Code. The petitioner has been acquitted in the criminal trial by order dated 6-6-1997 (Annexure P-4) and as such the suspension of the petitioner deserves to be set aside irrespective of the fact that the State – respondent has filed an appeal before the High Court.

5. *Per contra*, learned counsel appearing for respondent No.2 would submit that the appeal, being Criminal Appeal No.2308/1997, against the order of acquittal passed by the Sessions Court, Raipur, is pending consideration in the High Court, the suspension of the petitioner cannot be revoked.

6. After hearing learned counsel for the parties and perusing the petition, return and the records appended thereto, it is evident that the fact that the petitioner was acquitted in the criminal case by the trial Court is not disputed. Pendency of the appeal is also not disputed. The contention of learned counsel for respondent No.2 that during pendency of the appeal, the suspension of the petitioner cannot be revoked is not sustainable. Since the petitioner has been acquitted in criminal trial by the trial Court, the petitioner cannot be continued under suspension. Even if the petitioner is ultimately found guilty in the appeal, consequential order can be passed. The suspension is not a punishment. The purpose of suspension is to keep the delinquent away from the work in order to ensure smooth disposal of investigation, inquiry or trial. In the case of appeal, there is no question of any fresh evidence or deposition, which can be influenced by the petitioner or further records can be tampered with. The very purpose of keeping an employee under suspension is not required in an appellate proceeding. Thus, the suspension order dated 28-10-1995 (Annexure P-3) against the petitioner cannot be sustained for a period of 11 years.

7. Rule 9 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (henceforth 'the Rules of 1966') provides that a Government Servant may be placed under suspension where a case against him in respect of any criminal offence is under investigation, inquiry or trial. The relevant provisions of Rule 9 of the Rules of 1966 read as under :-

> "9.(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority

or any other authority empowered in that behalf by the Governor by general or special order, may place a Government servant under suspension –

(a) where a disciplinary proceeding against him is contemplated or is pending, or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial :

Provided that a Government Servant shall invariably be placed under suspension when a challan for a criminal offence involving corruption or other moral turpitude is filed against him :

Provided further that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made."

8. The purpose of suspension in the present case, i.e., smooth disposal of investigation, inquiry or trial of a criminal offence, is already over and the petitioner has been acquitted in the criminal trial. Thus, the petitioner cannot be placed under suspension continuously even under Rule 9 of the Rules of 1966.

9. The Supreme Court, in ***P.L.Shah*** **vs.** ***Union of India and another***[1], held as under :-

"6. An order of suspension is not an order imposing punishment on a person found to be guilty. It is an order made against him before he is

(54)

found guilty to ensure smooth disposal of the proceedings initiated against him."

10. Accordingly, the impugned suspension order dated 28-10-1995 (Annexure P-3) is quashed and the petition is allowed to that extent. The petitioner is entitled to consequential benefits flowing from this order. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

---

1 (1989) 1 SCC 546

Gopal